

**SEMINOLE COUNTY GOVERNMENT  
BOARD OF ADJUSTMENT  
AGENDA MEMORANDUM**

**SUBJECT:** REQUEST FOR A SPECIAL EXCEPTION TO ESTABLISH A CHURCH AND ATTENDANT FACILITIES ON PROPERTY ZONED A-5 (RURAL ZONING CLASSIFICATION DISTRICT); (CORNERSTONE CHURCH OF ORLANDO, APPLICANT).

**DEPARTMENT:** Planning & Development **DIVISION:** Planning

**AUTHORIZED BY:** Earnest McDonald **CONTACT:** Earnest McDonald **EXT.** 7430

**Agenda Date** 05-19-03 **Regular** ☐ **Consent** ☐ **Public Hearing – 6:00** ☒

**MOTION/RECOMMENDATION:**

1. **APPROVE** THE REQUEST FOR A SPECIAL EXCEPTION TO ESTABLISH A CHURCH AND ATTENDANT FACILITIES ON PROPERTY ZONED A-5 (RURAL ZONING CLASSIFICATION DISTRICT); (CORNERSTONE CHURCH OF ORLANDO, APPLICANT); OR
2. **DENY** THE REQUEST FOR A SPECIAL EXCEPTION TO ESTABLISH A CHURCH AND ATTENDANT FACILITIES ON PROPERTY ZONED A-5 (RURAL ZONING CLASSIFICATION DISTRICT); (CORNERSTONE CHURCH OF ORLANDO, APPLICANT); OR
3. **CONTINUE** THE REQUEST TO A TIME AND DATE CERTAIN.

(Commission District #1, Maloy)

(Earnest McDonald, Principal Coordinator)

<b>GENERAL INFORMATION</b>	CORNERSTONE CHURCH OF ORLANDO WILLINGHAM ROAD CHULUOTA, FL	A-5 DISTRICT, LDC SECTION 30.104(b)(3)
<b>BACKGROUND / REQUEST</b>	<ul style="list-style-type: none"> <li>• APPLICANT PROPOSES TO ESTABLISH A 7,800 SF CHURCH ON A 4.88 ACRE SITE.</li> <li>• THE SITE IS LOCATED IN THE A-5 DISTRICT, WHICH ONLY ALLOWS A CHURCH AS A CONDITIONAL USE; A SPECIAL EXCEPTION IS THEREBY REQUESTED.</li> <li>• ON FEBRUARY 25, 2002, THE BOA DENIED A REQUEST FOR THE ESTABLISHMENT OF A CHURCH ON THE SUBJECT PROPERTY.</li> <li>• THE APPLICANT HAS SINCE REDUCED THE SIZE OF THE PROPOSED CHURCH FROM 12,000 SF TO 7,800 SF.</li> <li>• ON MARCH 24, 2003, THE BOA CONTINUED THIS ITEM TO ITS APRIL REGULAR MEETING TO ALLOW FOR ADEQUATE PUBLIC NOTICE AS REQUESTED BY STAFF.</li> <li>• ON APRIL 28, 2003, THE BOA CONTINUED THIS ITEM TO</li> </ul>	

	ITS MAY REGULAR MEETING FOLLOWING THE PUBLIC HEARING. THE BOARD ALSO REQUESTED THAT STAFF FURTHER EVALUATE ISSUES RELATING TO STORMWATER MANAGEMENT, DRAINAGE, TRAFFIC IMPACT AND ANNEXATION.			
ZONING & FLU	<b>DIRECTION</b>	<b>EXISTING ZONING</b>	<b>EXISTING FLU</b>	<b>USE OF PROPERTY</b>
	SITE	A-5	RURAL-5	VACANT
	NORTH	A-5	RURAL-5	VACANT
	SOUTH	A-5	RURAL-5	RESIDENTIAL
	EAST	A-5	RURAL-5	VACANT
	WEST	A-5	RURAL-5	RESIDENTIAL & VACANT
SITE CONDITIONS	<ul style="list-style-type: none"> <li>• THE SITE IS LOCATED IN THE COUNTY'S EAST RURAL AREA, WHERE DEVELOPMENT STANDARDS, SUCH AS ACTIVE/PASSIVE BUFFERS, CENTRAL WATER &amp; SEWER REQUIREMENTS, STREET LIGHTING, INTERNAL SIDEWALKS, ETC. DO NOT APPLY.</li> <li>• THE SITE HAS FRONTAGE ON WILLINGHAM &amp; OLD CHULUOTA ROAD; THE PROPOSED SITE PLAN SHOWS SINGLE DRIVEWAY ACCESS FROM WILLINGHAM ROAD.</li> <li>• THE SITE WOULD BE SERVICED BY ON-SITE WELL &amp; SEPTIC SYSTEMS.</li> <li>• A 7,800 SF CHURCH WOULD GENERATE AN AVERAGE OF 9.37 TRIPS PER 1,000 SF OF GROSS FLOOR AREA DURING PEAK HOUR ON SUNDAY AND AN AVERAGE OF 9.32 TRIPS PER 1,000 SF OF GROSS FLOOR AREA ON A WEEKDAY. IN SUM, A CHURCH OF THE SIZE PROPOSED WOULD GENERATE AN AVERAGE OF 75 TRIPS DURING PEAK HOUR ON SUNDAY AND UP TO 73 TRIPS ON A WEEKDAY.</li> <li>• THE TRAFFIC ENGINEERING DIVISION HAS DETERMINED THERE ARE APPROXIMATELY 445 DAILY TRIPS ON THE SECTION OF WILLINGHAM ROAD ABUTTING THE SITE. THE PROPOSED CHURCH WOULD INCREASE THE AVERAGE DAILY TRAFFIC VOLUME UP TO 520 TRIPS.</li> <li>• THE SECTION OF WILLINGHAM ROAD ADJACENT TO THE SUBJECT PROPERTY IS CLASSIFIED AS A <i>RURAL LOCAL ROADWAY</i> WITH A LEVEL OF SERVICE (LOS) "A" AND A CAPACITY OF 2,250 TRIPS PER DAY. INCLUDING THE TRIPS THAT WOULD RESULT FROM THE PROPOSED CHURCH, THE SERVICE DEMAND WOULD REMAIN AT 23 PERCENT OF ADJOINING ROAD CAPACITY.</li> <li>• A GOPHER TORTOISE HABITAT HAS BEEN OBSERVED ON THE SITE. A LISTED SPECIES SURVEY WOULD BE REQUIRED TO ADDRESS THE POTENTIAL FOR GOPHER TORTOISES ON THE SITE.</li> <li>• EAGLE NEST #SE053 IS LOCATED WITHIN A MILE OF THE SITE. A LETTER FROM THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION WOULD BE REQUIRED TO</li> </ul>			

	<p>CONFIRM THE LOCATION OF THIS NEST AND THE REQUIREMENTS FOR DEVELOPING THIS SITE WITH RESPECT TO THE SAME.</p> <ul style="list-style-type: none"><li>• THERE ARE NO CLEARLY DEFINED DEVELOPMENT TRENDS IN THE IMMEDIATE AREA, OTHER THAN LARGE LOT, SINGLE-FAMILY RESIDENTIAL AND AGRICULTURAL USES.</li></ul>
<b>FINDINGS</b>	<ul style="list-style-type: none"><li>• THE PROPOSED CHURCH, WHICH WOULD INCLUDE A SANCTUARY, EDUCATIONAL CENTER AND OFFICE ARE CONDITIONAL USES IN THE A-5 DISTRICT. TO ENSURE CONSISTENCY WITH THE GENERAL ZONING PLAN OF THE A-5 DISTRICT AND PROTECT THE CHARACTER OF THE AREA, THE BOARD OF ADJUSTMENT MAY IMPOSE REASONABLE RESTRICTIONS AND CONDITIONS.</li><li>• THE PROPOSED USE IS NOT HIGHLY INTENSIVE IN NATURE, AS THE SANCTUARY PROPOSES TO SEAT NO MORE THAN 225 PEOPLE.</li><li>• THE PROPOSED USE WOULD BE CONSISTENT WITH THE CONCEPT OF LOW-DENSITY, RURAL LAND USE WITH THE IMPOSITION OF THE CONDITIONS RECOMMENDED BY STAFF IN THIS REPORT.</li><li>• PURSUANT TO THE COUNTY'S COMPREHENSIVE PLAN, A MINIMUM LEVEL OF SERVICES AND FACILITIES WOULD BE REQUIRED FOR THE DEVELOPMENT OF THIS PROPERTY.</li></ul>
<b>STAFF RECOMMENDATION</b>	<ul style="list-style-type: none"><li>• STAFF HAS CONDUCTED A THOROUGH REVIEW OF STORMWATER, DRAINAGE, TRAFFIC AND ANNEXATION ISSUES ASSOCIATED WITH THE PROPOSED DEVELOPMENT. STAFF HAS ALSO CONSIDERED THE APPLICABILITY OF THE <i>RELIGIOUS LAND USE &amp; INSTITUTIONALIZED PERSONS ACT (RLUIPA)</i> TO THE PROPOSED USE, BASED ON DISCUSSIONS AT THE APRIL 28, 2003 PUBLIC HEARING.</li><li>• AS PREVIOUSLY STATED IN THIS REPORT, STAFF BELIEVES THE PROPOSED CHURCH WOULD BE CONSISTENT WITH THE TREND OF DEVELOPMENT IN THE AREA, WITH THE IMPOSITION OF THE FOLLOWING CONDITIONS:<ul style="list-style-type: none"><li>○ THE MAXIMUM SQUARE FOOTAGE OF THE PROPOSED BUILDINGS SHALL NOT EXCEED 7,800 SQUARE FEET.</li><li>○ A MINIMUM 15-FEET NATURAL BUFFER SHALL BE RETAINED ALONG THE NORTHERN AND EASTERN PROPERTY LINES.</li><li>○ ANY EXTERIOR LIGHTING SHALL BE LIMITED TO 16 FT IN HEIGHT, UTILIZE CUTOFF/SHOEBBOX STYLE LIGHTING, AND BE LOCATED A MINIMUM OF 50 FT FROM PROPERTY LINES TO MINIMIZE IMPACT TO ADJACENT PROPERTIES.</li><li>○ THE FINAL SITE PLAN SHALL MEET THE APPLICABLE REQUIREMENTS OF THE SEMINOLE COUNTY VISION 2020 COMPREHENSIVE PLAN AND LAND</li></ul></li></ul>

	<p>DEVELOPMENT CODE.</p> <ul style="list-style-type: none"><li>• STAFF THEREBY RECOMMENDS THE BOARD OF ADJUSTMENT APPROVE THE REQUEST FOR SPECIAL EXCEPTION BASED ON THE FINDINGS PRESENTED AND SUBJECT TO THE CONDITIONS ENUMERATED ABOVE.</li><li>• IF THE BOARD SHOULD DECIDE TO DENY THIS REQUEST, THE FINDINGS UPON WHICH SUCH A DECISION IS BASED SHOULD FURTHER "A COMPELLING GOVERNMENTAL INTEREST" AND CONSTITUTE THE "LEAST RESTRICTIVE MEANS" OF DOING SO. THE BOARD MAY WANT TO CONSIDER PUBLIC HEALTH AND SAFETY CONCERNS AS COMPELLING GOVERNMENTAL INTERESTS.</li></ul>
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**ATTACHMENTS:**

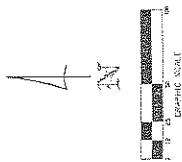
PROPOSED SITE PLAN

PROPOSED DEVELOPMENT ORDER 03-32000005

SUMMARY OF *RELIGIOUS LAND USE & INSTITUTIONALIZED PERSONS ACT (RLUIPA)*

LETTERS FROM AFFECTED PROPERTY OWNERS

2/25/1955  
1 Cowp requirements for section 201201 parking = 1 space per 5 sanctuary seats + 45 spaces  
parking as shown = 75 + 45 = 120  
Estimated Total Incurious Surface 36,307 Sq. Ft. (1955)



- |    |    |          |    |    |          |
|----|----|----------|----|----|----------|
| 20 | 10 | CONSPIRE | 10 | 10 | CONSPIRE |
| 19 | 9  | RODENT   | 9  | 9  | RODENT   |
| 18 | 8  | MANAGE   | 8  | 8  | MANAGE   |
| 17 | 7  | RECORD   | 7  | 7  | RECORD   |
| 16 | 6  | RECORD   | 6  | 6  | RECORD   |
| 15 | 5  | GOVERN   | 5  | 5  | GOVERN   |
| 14 | 4  | WATER    | 4  | 4  | WATER    |
| 13 | 3  | WATER    | 3  | 3  | WATER    |
| 12 | 2  | WATER    | 2  | 2  | WATER    |
| 11 | 1  | WATER    | 1  | 1  | WATER    |
| 10 | 0  | WATER    | 0  | 0  | WATER    |
| 9  | 9  | WATER    | 9  | 9  | WATER    |
| 8  | 8  | WATER    | 8  | 8  | WATER    |
| 7  | 7  | WATER    | 7  | 7  | WATER    |
| 6  | 6  | WATER    | 6  | 6  | WATER    |
| 5  | 5  | WATER    | 5  | 5  | WATER    |
| 4  | 4  | WATER    | 4  | 4  | WATER    |
| 3  | 3  | WATER    | 3  | 3  | WATER    |
| 2  | 2  | WATER    | 2  | 2  | WATER    |
| 1  | 1  | WATER    | 1  | 1  | WATER    |
| 0  | 0  | WATER    | 0  | 0  | WATER    |

DESCRIPTION  
THE SOUTH 366.30 FEET OF THE EAST 1/2 OF THE WEST 1/2 OF THE  
THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 21 SOUTH, RANGE 32  
EAST, SEMINOLE COUNTY, FLORIDA, LESS RIGHT OF WAY FOR OLD  
CHALMERS ROAD AND LESS RIGHT OF WAY FOR MILLBURN ROAD.

4,884 ACRES, +

**SEMINOLE COUNTY APPROVAL DEVELOPMENT ORDER**

On May 19, 2003, Seminole County issued this Development Order relating to and touching and concerning the following described property:

SEC 20 TWP 21S RGE 32E S 366.5 FT OF E 1/2 OF W 1/2 OF NE 1/4 (LESS RDS)

(The aforescribed legal description has been provided to Seminole County by the owner of the aforescribed property.)

**FINDINGS OF FACT**

**Property Owner:** CORNERSTONE CHURCH OF ORLANDO  
2333 DONEGAN PLACE  
ORLANDO, FL 32826

**Project Name:** CHURCH & ATTENDANT FACILITIES

**Requested Development Approval:**

1. SPECIAL EXCEPTION TO ESTABLISH A CHURCH AND ATTENDANT FACILITIES AT THE NE CORNER OF WILLINGHAM ROAD AND OLD CHULUOTA ROAD, ON PROPERTY ZONED A-5 (RURAL ZONING CLASSIFICATION DISTRICT)

The Development Approval sought is consistent with the Seminole County Comprehensive Plan and will be developed consistent with and in compliance to applicable land development regulations and all other applicable regulations and ordinances.

The owner of the property has expressly agreed to be bound by and subject to the development conditions and commitments stated below and has covenanted and agreed to have such conditions and commitments run with, follow and perpetually burden the aforescribed property.

Prepared by: Earnest McDonald  
1101 East First Street  
Sanford, Florida 32771

Order

**NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:**

(1) The aforementioned application for development approval is **GRANTED**.

(2) All development shall fully comply with all of the codes and ordinances in effect in Seminole County at the time of issuance of permits including all impact fee ordinances.

(3) The conditions upon this development approval and the commitments made as to this development approval, all of which have been accepted by and agreed to by the owner of the property are as follows:

1. The maximum square footage of the proposed buildings shall not exceed 7,800 square feet.
2. A minimum 15-foot natural buffer shall be retained along the northern and eastern property lines.
3. Any exterior lighting shall be limited to 16 ft in height, utilize cutoff/shoebox style lighting, and be located a minimum of 50 ft from property lines to minimize impact to adjacent properties.
4. The final site plan shall meet the applicable requirements of the Seminole County Vision 2020 Comprehensive Plan and Land Development Code.

(4) This Development Order touches and concerns the aforescribed property and the conditions, commitments and provisions of this Development Order shall perpetually burden, run with and follow the said property and be a servitude upon and binding upon said property unless released in whole or part by action of Seminole County by virtue of a document of equal dignity herewith. The owner of the said property has expressly covenanted and agreed to this provision and all other terms and provisions of this Development Order.

(5) The terms and provisions of this Order are not severable and in the event any portion of this Order shall be found to be invalid or illegal then the entire order shall be null and void.

FILE # BS2003-002

DEVELOPMENT ORDER # 03-32000005

Done and Ordered on the date first written above.

By: \_\_\_\_\_  
Matthew West  
Planning Manager

STATE OF FLORIDA     )  
COUNTY OF SEMINOLE )

**I HEREBY CERTIFY** that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification and who executed the foregoing instrument.

**WITNESS** my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public, in and for the County and State  
Aforementioned

My Commission Expires:



FILE # BS2003-002

DEVELOPMENT ORDER # 03-32000005

**OWNER'S CONSENT AND COVENANT**

**COMES NOW**, the owners, CORNERSTONE CHURCH OF ORLANDO, on behalf of itself and its heirs, successors, assigns or transferees of any nature whatsoever and consents to, agrees with and covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this Development Order.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Trustee

STATE OF FLORIDA     )

)

COUNTY OF SEMINOLE )

**I HEREBY CERTIFY** that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Insert Name who is personally known to me or who has produced \_\_\_\_\_ as identification and who did take an oath.

**WITNESS** my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public, in and for the County and State  
Aforementioned

My Commission Expires:

# Religious Land Use and Institutionalized Persons Act of 2000

Public Law 106-274, 114 Stat. 803, 42 U.S.C. 2000cc et seq.

## Contents

- [Section 1. Short Title](#)
- [Section 2. Protection of Land Use As Religious Exercise](#)
- [Section 3. Protection of Religious Exercise of Institutionalized Persons](#)
- [Section 4. Judicial Relief](#)
- [Section 5. Rules of Construction](#)
- [Section 6. Establishment Clause Unaffected](#)
- [Section 7. Amendments to Religious Freedom Restoration Act](#)
- [Section 8. Definitions](#)

## An Act

To protect religious liberty, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the "Religious Land Use and Institutionalized Persons Act of 2000".

### SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

#### (a) Substantial Burdens.--

(1) General rule.--No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application.--This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of

general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and Exclusion.--

(1) Equal terms.--No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination.--No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits.--No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

### SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

(a) General Rule.--No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person--

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) Scope of Application.--This section applies in any case in which--

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

### SEC. 4. JUDICIAL RELIEF.

(a) Cause of Action.--A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) Burden of Persuasion.--If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff

shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) Full Faith and Credit.--Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) Attorneys' Fees.--Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended--

(1) by inserting "the Religious Land Use and Institutionalized Persons Act of 2000," after "Religious Freedom Restoration Act of 1993,"; and

(2) by striking the comma that follows a comma.

(e) Prisoners.--Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States To Enforce This Act.--The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation.--If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

## SEC. 5. RULES OF CONSTRUCTION.

(a) Religious Belief Unaffected.--Nothing in this Act shall be construed to authorize any government to burden any religious belief.

(b) Religious Exercise Not Regulated.--Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) Claims to Funding Unaffected.--Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) Other Authority To Impose Conditions on Funding Unaffected.--Nothing in this Act shall--

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) Governmental Discretion in Alleviating Burdens on Religious

Exercise.--A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on Other Law.--With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.

(g) Broad Construction.--This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.

(h) No Preemption or Repeal.--Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i) Severability.--If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

## SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the ``Establishment Clause''). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term ``granting'', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

## SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) Definitions.--Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-2) is amended--

(1) in paragraph (1), by striking "a State, or a subdivision of a State" and inserting "or of a covered entity";

(2) in paragraph (2), by striking "term" and all that follows through "includes" and inserting "term 'covered entity' means"; and

(3) in paragraph (4), by striking all after "means" and inserting "religious exercise, as defined in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000.".

(b) Conforming Amendment.--Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking "and State".

## SEC. 8. DEFINITIONS.

In this Act:

(1) Claimant.--The term "claimant" means a person raising a claim or defense under this Act.

(2) Demonstrates.--The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

(3) Free exercise clause.--The term "Free Exercise Clause" means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government.--The term "government"--

(A) means--

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 4(b) and 5, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation.--The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity.--The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

(7) Religious exercise.--

(A) In general.--The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule.--The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

Approved September 22, 2000.



# SOUTHERN CROSS PROPERTIES, INC.

To: Mr. Mike Hattaway, Chairman, Seminole County Board of Adjustment  
Ms. Deborah Schafer, President, S.S.C.V.A.

From: Leigh McEachern

Ref: Cornerstone Church of Orlando, special exception, (BS2003-002)

Date: April 30, 2003

Thank you for your patience last Monday evening on this application. A few points for your collective consideration:

1. The Chuluota Sportsmen's Club, just north of the site in question, has over 200 members; operates 7 days per week, day as well as night; conducts live fire target practice with everything from pistols to semi-automatics; pre-dates most of the homes in that area; has not adversely impacted either value or marketability of properties, including Osprey Lakes. I can hear them from my home on Snow Hill Road.
2. Every church in Chuluota is in a residential area surrounded by homes, which in most cases were built after the church; clearly the churches did not adversely impact either value or marketability of contiguous properties. In fact the past president of the Southeast Seminole County Voter's Assoc. built a two-story, Southern- colonial home (cost - approximately \$250,000.) immediately next door to the Faith Assembly of God Church, which does operate a day-care center
3. I would be a very poor businessman to facilitate the sale of a property about \$30,000. below market, if the use of that property could adversely impact the marketability &/or value of the remaining 50+ acres still owned by the principal whom I represent. (The contract closed last September, the commission has been paid; I have no financial interest herein.)

# Liberty Counsel

Post Office Box 540774  
Orlando, Florida 32854  
(407) 875-2100 Telephone

<http://www.lc.org>  
[liberty@lc.org](mailto:liberty@lc.org)  
(407) 875-0770 Fax

January 6, 2003

Mr. Steve Anderson  
Building Committee Chairperson  
Cornerstone Church of Orlando  
1617 Sultan Circle  
Chuluota, FL 32766

Re: Cornerstone Church of Orlando

Dear Mr. Anderson:

Liberty Counsel is a religious civil liberties legal defense and education organization. Much of our work in this area deals with churches and zoning. You have contacted our office regarding your application for a special exception to have a church on your property in Seminole County. You have related that Cornerstone initially applied for a special exception in January of 2001. After a public hearing, the Board of Adjustment denied the application for a special exception. The public hearing was characterized by testimony in opposition from many neighbors who did not want the church to locate on this property.

It is our understanding that the Church's current application represents a scaled-down version on the initial application submitted in January, 2002.

After reviewing your initial application, the Church's current application and the evidence and testimony presented at the previous hearing, it is our opinion that the Church's application for a special exception is governed by the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §2000cc-1, *et seq.* ("RLUIPA"). This federal law, a copy of which is attached to this letter, essentially changes the standard to be applied to churches when they apply for a special exception. RLUIPA applies to this case in two ways.

RLUIPA first prevents the county from substantially burdening<sup>1</sup> the church through a land use regulation unless the county has a compelling interest. This means that a denial of the Church's special exception application must be supported by a compelling governmental interest. A compelling interest means that the Board of Adjustment must have an interest of the highest order that is "compelling" before it can deny the Church's special exception application. A compelling

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<sup>1</sup> The Church in this case could easily demonstrate that a denial of its application for a special exception resulted in a substantial burden on the Church.




interest is not just someone's opinion, but rather means that if the Board of Adjustment votes to deny the Church's application, it must demonstrate that there is a countervailing interest that is extremely important to override the Church's conversion of this property into a church. Our opinion is that there was no compelling interest shown when the Board of Adjustment denied the Church's initial application last year and, given the scaled-back plan the Church is presenting this year, there is certainly no compelling interest that could be demonstrated currently to deny the Church's application.

Secondly, RLUIPA also prevents a governmental entity from treating churches on less than equal terms with other secular assembly uses. This means that churches must be treated equally with other secular assembly uses. On this issue, I would note that the County's zoning code, on its face, violates RLUIPA. In the A-5 zoning classification where the Church's property is located, §30.102(k) of the Land Development Code allows for public elementary schools as a Permitted Use. Churches, by contrast, are allowed in the A-5 zone only by special exception. This is clearly an unequal treatment of churches with other secular assembly uses and opens the County's zoning code to a facial attack under RLUIPA.

Beyond RLUIPA, the State of Florida has enacted Florida's Religious Freedom Restoration Act. ("RFRA") which is attached to this letter. This Act mirrors the provisions of RLUIPA's substantial burden section. Therefore, not only would a denial of the special exception application be in violation of federal law, as mentioned above, a denial would also be in violation of state law as well.

I hope this explanation has been helpful. If there are any questions regarding RLUIPA or its impact on this case, please do not hesitate to contact me. It is our hope that the Board of Adjustment will approve the Church's application for a special exception and so prevent any violation of RLUIPA or Florida's RFRA.

Sincerely,



Erik W. Stanley

Enclosure

# GIBBS LAW FIRM, P.A.

*Attorneys and Counselors at Law*

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January 02, 2003

Mike Hattaway, Chairman  
Seminole County Board of Adjustment  
1101 East First St.  
Sanford, FL 32771

*Re: Application of Cornerstone Church for Conditional Use Permit*

Dear Chairman Hattaway:

We are writing this letter to express our support for the above-referenced application, and to call the Board's attention to the religious freedom issues that may be raised if the application is denied.

As General Counsel for the Christian Law Association for four decades, this firm is primarily dedicated to promoting and defending the free, public expression of Bible-believing churches and Christians across the United States. In accordance with this commitment, we have frequently represented religious organizations that encounter obstacles to using real property for worship space.

Most recently, we have successfully represented churches under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). Currently, we have at least one case pending in federal court involving deprivations of religious liberty in the land use context.

The principles embodied in RLUIPA enjoy broad, bipartisan support: the legislation sailed through both houses of Congress, virtually unopposed, and was signed into law by President Clinton on September 22, 2000. RLUIPA provides, in relevant part, that:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –

- (A) is in furtherance of a compelling governmental interest; and
- (B) is the least restrictive means of furthering that compelling governmental interest.

RLUIPA § 2(a)(1) (emphasis added).

**GIBBS LAW FIRM, P.A.**

*Attorneys and Counselors at Law*

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Chairman Hattaway

January 02, 2003

We are writing because we have concluded that, if the Board denies the present application, the Board would violate RLUIPA. Cornerstone Church is plainly a "religious assembly or institution," and it desires to engage in "religious exercise" by using the property in question for religious worship and other ministries. See RLUIPA § 8(7)(B) ("The use . . . or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise . . ."). By applying the "land use regulations" at issue here to prohibit that "religious exercise," the Board would impose a "substantial burden" on that exercise. Thus, if the Board denies the conditional use permit, the Board would "implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of . . . a religious assembly or institution." RLUIPA § 2(a)(1). Moreover, it appears to us unlikely that the Board will be able to prove that this "substantial burden" either furthers a "compelling governmental interest," or is the "least restrictive means" of furthering such an interest. We therefore encourage the Board to avoid these legal risks by granting the application.

We recognize that, because RLUIPA is a relatively new statute, the Board may not have been aware that it applies here, or what it requires. If the Board would find it helpful, we would be happy to provide more detailed information about RLUIPA. In any event, we want to make it clear that our purpose is to promote a fair and prompt resolution of this matter, without unnecessary conflict.

We thank the Board for considering our views, and we welcome any further questions the Board may have.

Sincerely,

*Gibbs Law Firm, P.A.*

A handwritten signature in black ink, appearing to read "K. Mark Johnson", written over a horizontal line.

K. Mark Johnson  
*Admitted in Florida*

cc: Steve Anderson, Building Committee Chairman  
Cornerstone Church  
2333 Donnegan Place  
Orlando, FL 32827



2/26/2002